IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.10739 of 2006
UDAY NATH SINGH & ORS
Versus
STATE OF BIHAR

For the petitioners : M/s Ravi Shankar Sahay and Randhir Kumar, Advocates
For the State : Mr. Jharkhandi Upadhaya, A.P.P.
For O.P.No. 2 : None

O R D E R

The five named accused of Complaint Case No. 831 of 2005 have preferred this application for quashing of the order dated 19.9.2005 passed therein by Sri D.P.Singh, Judicial Magistrate, First Class, Bhabhua, whereby he has taken cognizance of offences under sections 148, 427, 304 I.P.C. as also section 27 of the Arms Act against the petitioners.

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According to Premlata Devi, the complainant, impleaded herein as O.P. No. 2, she along with her husband had purchased 14 1/8 decimals of land appertaining to *khata* no. 14, plot no. 273, ward no. 2, Bhabhua, from one Narayan Mallah, in the year 1981, through three registered sale deeds and since then they are in possession over the same following mutation and in the year 2000 a 5 ft. high boundary wall was erected and in the north western portion a garage was constructed wherein were stored the motorcycle and odd articles. It is alleged that on 24.7.2005 at about 10 A.M. all the accused persons with 10 -12 unknown others variously armed suddenly arrived and started demolishing the boundary wall and when she protested, they started abusing her and accused Ramashish Singh and Nand Bihari

Tiwary resorted to firing to install fear. Eventually having demolished the boundary wall and damaged portion of the garage they went away with articles worth Rs. 20,000/- kept in the garage and caused damage to the tune of Rs. 50,000/-. The delay in filing the complaint is attributed to the fact that it was done only after the arrival of her husband who was a Bank Manager at Ranchi.

The impugned order is sought to be assailed on the ground that the learned Magistrate had taken cognizance mechanically without there being any material available to make out a prima facie case and without considering the improbability of the complainant's story. While denying their participation or complicity in the alleged occurrence and raising grievance in respect of the delay in filing the complaint, it was submitted that it was the Administration which had demolished the wall in compliance of the order of the District Magistrate for removal of encroachment. In this connection, it was contended that an encroachment proceeding had been initiated on the basis of a complaint filed by accused Ramashish Singh before the Sub-Divisinal Magistrate, Bhabhua, and following a report submitted by the Anchal Amin, it was in pursuance of the order of the District Magistrate and the Nagar Panchayat that the Circle Inspector on Magisterial duty who had got the offending wall demolished and the complainant with an oblique motive to harass the petitioners and taking advantage of the situation had filed the false complaint case. The report of the Anchal Amin and the Circle Inspector have been appended to the application as Annexures 3 and 4 respectively in

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support of the submissions. However, the order of the District Magistrate or the case no. of the encroachment case have not been furnished.

The plea resorted to by the petitioners of the wall being demolished by the administration is their defence which unfortunately cannot be looked into in a proceeding under section 482 Cr.P.C. at this stage.

Admittedly the instant case arises out of complaint petition filed by O.P. No. 2 herein which apparently calls for the holding of an enquiry under section 202 Cr.P.C. before any cognizance can be taken. As observed by the Apex Court in Chandra Deo Vs. Prakash Chandra (AIR 1963 SC 1430) since the object of an enquiry under section 202 Cr.P.C. is to ascertain whether the allegations made in the complaint are intrinsically true, the Magistrate has to satisfy himself that there is sufficient ground for proceeding and for this he is entitled to consider the evidence taken by him or recorded in an enquiry under section 202 Cr.P.C. and he is not entitled to rely upon any other material besides this and where there is prima facie evidence, even though an accused may have a plausible defence of innocence, the matter has to be left to be decided by the appropriate forum at the appropriate stage and issue of process cannot be refused.

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In view of the categoric observations of the Apex Court, the plausible defence resorted to by the petitioners herein cannot be looked into at this stage. The petitioners shall be at liberty to raise the plea before the appropriate forum at the appropriate time.

In view of the discussions made above I find no merit in this application which is dismissed.

The Patna High Court **(Abhijit Sinha, J.)**
The Dated 14th August, 2008
Sanjay Pd./ A.F.R.

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